

SR-Phlx-2003-78. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-2003-78 and should be submitted by January 9, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48923; File No. SR-OC-2003-09]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by OneChicago, LLC To Adopt OneChicago Rule 616 Relating to "Chinese Walls"

December 12, 2003.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-7 under the Act,<sup>2</sup> notice is hereby given that on December 8, 2003, OneChicago, LLC ("OneChicago" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes described in Items I, II, and III below, which Items have been prepared by OneChicago. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

OneChicago also has filed the proposed rule change with the Commodity Futures Trading

Commission ("CFTC"). OneChicago filed a written certification with the CFTC under section 5c(c) of the Commodity Exchange Act<sup>3</sup> on December 5, 2003, which stated that the effective date of the proposed rule change is December 8, 2003.

#### I. Self-Regulatory Organization's Description of the Proposed Rule Change

OneChicago proposes to add new OneChicago Rule 616, attached hereto as Exhibit 4, to create a safe harbor for OneChicago market makers so that they may engage in Other Business Activities described below which may result in inadvertent cross trades without violating OneChicago Rule 604, provided that OneChicago confirms that each such market maker has implemented and maintains "Chinese Wall" procedures in conformance with the Rule. The text of the proposed rule change appears below. New text is in *italics*. Deleted text is in [brackets].

\* \* \* \* \*

#### **Rule 616. Safe Harbor for Inadvertent Cross Trades**

(a) *An Entity acting as a market maker for any Exchange product (an "Exchange Market Maker") may engage in Other Business Activities, or it may be affiliated with a broker-dealer that engages in Other Business Activities, and shall not be in violation of Exchange Rule 604 due to inadvertent cross trades with respect to any trades that are matched by the OneChicago System against trades entered for or on behalf of the Other Business Activities, provided that the Exchange Market Maker implements and maintains a Chinese Wall between its market-making operations and such Other Business Activities that meets the requirements below.*

(b) *Definitions: For purposes of this rule, (1) "Other Business Activities" means:*

- (A) *conducting an investment or banking or public securities business;*
- (B) *making markets in the securities underlying the security futures or options on the securities or indexes underlying the security futures in which it makes markets; or*
- (C) *entering agency orders or proprietary orders (other than market making transactions for Exchange products) into the OneChicago System.*

(2) *"Chinese Wall" means an organizational structure that satisfies each of the following conditions:*

(A) *The market-making activities are conducted in a location physically*

*separated from the locations in which the Other Business Activities are conducted in a manner that effectively impedes communications between persons conducting the market-making function and persons conducting the Other Business Activities.*

(B) *Procedures are implemented and maintained to prevent persons in possession of material, non-public corporate or market information on one side of the Chinese Wall from divulging such information to persons on the other side of the Chinese Wall.*

(C) *Persons on one side of the Chinese Wall may not exercise influence or control over persons on the other side of the Chinese Wall, except that:*

(i) *the market-making operations and the Other Business Activities may be under common management provided such managerial oversight (a) does not conflict with or compromise the Entity's responsibilities under the Rules of the Exchange and (b) persons occupying managerial positions do not divulge information or allow information to be divulged pertaining to market maker positions and trading activities to any other person so that any person on one side of the Chinese Wall becomes aware of pending or anticipated quotes or unfilled orders on the other side of the Chinese Wall; and*

(ii) *the common supervisor or any individual responsible for monitoring the overall risk exposure of the Entity (the "Risk Exposure Supervisor") may establish general trading parameters with respect to both market-making and other proprietary trading other than on an order specific basis, provided that the Risk Exposure Supervisor does not:*

(a) *enter orders into the OneChicago System or make trading decisions for either the Entity's market-making account or proprietary account;*

(b) *provide to any person performing the Other Business Activities described in paragraph (b)(1)(c) of this Rule any information relating to market-making activity; nor*

(c) *provide a person performing the market-making function with information regarding the firm's pending transactions or order flow arising out of its activities described in paragraph (b)(1)(c) of this Rule.*

(3) *An "Entity" means an inanimate business organization, including a corporation, a partnership or other legal business organization. It does not include animate beings.*

(c) *An Entity implementing a Chinese Wall pursuant to this Rule shall submit to the Exchange a written statement setting forth:*

(1) *The manner in which it intends to satisfy the conditions in paragraph (b)*

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>14</sup> 15 U.S.C. 78s(b)(7).

<sup>15</sup> 17 CFR 240.19b-7.

<sup>3</sup> 7 U.S.C. 7a-2(c).

of this Rule and the compliance and audit procedures it proposes to implement to ensure that the Chinese Wall is maintained;

(2) The names and titles of the person or persons responsible for maintenance and surveillance of the procedures;

(3) A commitment to provide the Exchange with such information and reports as the Exchange may request relating to the transactions of the Entity and its affiliates;

(4) A commitment to take appropriate disciplinary action against any person violating this Rule or the Entity's internal compliance and audit procedures adopted pursuant to subparagraph (c)(1) of this Rule, and an acknowledgement that the Exchange may take appropriate disciplinary action, including (without limitation) reallocation of any or all Contracts in which it serves as a market maker, in the event of such a violation;

(5) Whether the Entity or an affiliate of the Entity intends to clear the Entity's proprietary trades and, if so, the procedures established to ensure that information with respect to such clearing activities will not be used in a way that would compromise the Entity's Chinese Wall, which procedures, at a minimum, must be the same as those used by the Entity or the affiliate to clear for unaffiliated third parties; and

(6) An acknowledgement that any trading by a person while in possession of material, non-public information received as a result of the breach of the internal controls required under this Rule may be a violation of the CEA, the Commission's Regulations, the Exchange Act, the rules thereunder or the Rules of the Exchange.

(d) An Exchange Market Maker cannot avail itself of this Rule until it has received written confirmation from the Exchange that the organizational structure and the compliance and audit procedures described in the statement submitted by such Exchange Market Maker in accordance with paragraph (c) above comply with this Rule.

(e) Subparagraph (c)(5) permits an Entity or an affiliate of the Entity to clear the Entity's market maker transactions if it establishes procedures to ensure that information with respect to such clearing activities will not be used to compromise the Chinese Wall. Such procedures must provide that any information pertaining to market maker positions and trading activities, and information derived from any clearing and margin financing arrangements, may be made available only to those employees (other than employees actually performing clearing and margin functions) specifically authorized under

this Rule to have access to such information or to other employees in senior management positions, including common management as described in clause (b)(2)(C)(i) of this Rule, who are involved in exercising managerial oversight with respect to the market making activity.

(f) Notwithstanding paragraph (a) of this Rule, an Entity shall not be required to maintain a Chinese Wall to obtain safe harbor from violating Rule 604 due to inadvertent cross trades under the following conditions:

(1) the Entity functions as a non-market market Exchange Member in the OneChicago System solely in Contracts in which the Entity is not appointed as a market market pursuant to Rule 515(n); and

(2) the Entity enters orders into the OneChicago System as a non-market marker Exchange Member only for (i) the proprietary account of such Entity or (ii) the account of entities that are affiliated with such Entity.

\* \* \* \* \*

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OneChicago has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

OneChicago proposes to add new OneChicago Rule 616 to provide a safe harbor to market makers for inadvertent cross trades that may occur between their market-making operations in OneChicago's products and their "Other Business Activities" (as defined below) on the condition that OneChicago confirms that each such market maker has implemented and maintains "Chinese Wall" procedures in conformance with OneChicago Rule 616. For purposes of this Rule, "Other Business Activities" means (1) conducting an investment or banking or public securities business; (2) making markets in the securities underlying the security futures or options on the securities or indexes underlying the security futures in which the market maker makes markets; or (3) entering

agency orders or proprietary orders (other than market-making transactions for OneChicago products) into the OneChicago system. OneChicago Rule 616 would also permit members to conduct proprietary trading in the same physical space as their market-making activities, but only in security futures products that are not within their market-making assignments.<sup>4</sup>

To qualify for the protection afforded by the OneChicago Rule 616 safe harbor, a OneChicago market maker must meet the following conditions: Have an organizational structure that has physical separation between the persons engaged in its market making activities on the Exchange and the persons conducting its "Other Business Activities"; implement "Chinese Wall" procedures to prevent the use of material non-public, corporate or market information in possession of persons on one side of the wall from divulging such information to persons on the other side of the wall; and restrict, with some exceptions,<sup>5</sup> persons from one side of the wall from exercising influence or control over persons on the other side of the wall. As a precondition to relying on proposed OneChicago Rule 616 as a safe harbor for inadvertent cross trades, an Exchange market maker would be required to submit to the Exchange a written statement that sets forth the manner in which it intends to satisfy the conditions described above; the names and titles of the person or persons responsible for maintenance and surveillance of the Chinese Wall procedures; a commitment to provide the Exchange with such information and reports as the Exchange may request; a commitment to take appropriate

<sup>4</sup> The Commission approved a similar provision in International Securities Exchange, Inc. Rule 810 in December 2000. See Securities Exchange Act Release No. 43729 (December 15, 2000), 65 FR 81551 (December 26, 2000).

<sup>5</sup> OneChicago proposes two exceptions to OneChicago's Rule 616 Chinese Wall requirement that persons on one side of the wall may not exercise influence or control over persons on the other side of the wall. The first exception permits the market making function and Other Business Activities to be under common management as long as any management oversight does not conflict with or compromise the market maker's responsibilities under OneChicago Rules. The second exception permits the same person or persons to supervise the market-making functions and Other Business Activities to monitor the overall risk exposure of the firm or affiliated firms. This exception does not, however, permit such supervisor to enter orders in the OneChicago System or make trading decisions for either the market-making account or any other proprietary account; provide information to any person performing Other Business Activities with information relating to market-making activity; or provide a person performing the market maker function with information regarding the firm's pending transactions or order flow arising out of its Other Business Activities.

disciplinary action against any person violating proposed OneChicago Rule 616 or the member's internal compliance and audit procedures adopted pursuant to proposed OneChicago Rule 616; the procedures established to ensure that information with respect to clearing activities will not be used to compromise the entity's Chinese Wall; and an acknowledgement that any trading by a person while in possession of material non-public information received as a result of the breach of the internal controls required under proposed OneChicago Rule 616 may be a violation of the Act, the rules and regulations thereunder, the CEA, the CFTC Regulations, or the Rules of the Exchange.

Under paragraph (f) of proposed OneChicago Rule 616, an OneChicago market maker would not be in violation of OneChicago Rules 604, if the Exchange market maker functions as a non-market maker Exchange member exclusively in contracts in which such member is not appointed as a market maker pursuant to OneChicago Rule 515(n) and such member enters orders only for its proprietary account or the accounts of its affiliated entities.

## 2. Statutory Basis

OneChicago believes that the proposed rule change is consistent with section 6(b)(5) of the Act<sup>6</sup> because it promotes just and equitable principles of trade and is designed to prevent fraudulent and manipulative practices.

### B. Self-Regulatory Organization's Statement on Burden on Competition

OneChicago believes that the proposed new rule will promote competition by offering a safe harbor for market makers executing inadvertent cross trades on the Exchange and thereby removing a significant deterrent to potential market makers for the Exchange's products.

### C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change have not been solicited and none have been received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective on December 8, 2003. Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the

CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of section 19(b)(1) of the Act.<sup>7</sup>

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments also may be submitted electronically to the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-NASD-2003-174. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of these filings also will be available for inspection and copying at the principal office of OneChicago. All submissions should refer to File No. SR-OC-2003-09 and should be submitted by January 9, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## DEPARTMENT OF STATE

### [Public Notice 4531]

### U.S. Advisory Commission on Public Diplomacy; Notice of Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held at the American Embassy in

London, England on January 9, 2004. The Commission will examine and approve public diplomacy subjects for exploration in Fiscal Year 2004.

The Commission was reauthorized pursuant to Pub. L. 106-113 (H.R. 3194, Consolidated Appropriations Act, 2000).

The U.S. Advisory Commission on Public Diplomacy is a bipartisan Presidentially appointed panel created by Congress in 1948 to provide oversight of U.S. Government activities intended to understand, inform and influence foreign publics. The Commission reports its findings and recommendations to the President, the Congress and the Secretary of State and the American people. Current Commission members include Barbara M. Barrett of Arizona, who is the Chairman; Harold C. Pachios of Maine; Ambassador Penne Percy Korth of Washington, DC; Ambassador Elizabeth F. Bagley of Washington, DC; Charles "Tre" Evers III of Florida; Jay T. Snyder of New York; and Maria Sophia Aguirre of Washington, DC.

For more information, please contact Matt J. Lauer at (202) 203-7880.

Dated: December 15, 2003.

**Matthew Lauer,**

Executive Director, U.S. Advisory Commission on Public Diplomacy, Department of State.

[FR Doc. 03-31355 Filed 12-18-03; 8:45 am]

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## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Determination Regarding Waiver of Discriminatory Purchasing Requirements With Respect to Goods and Services Covered by Chapter 9 of the U.S.-Chile Free Trade Agreement

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Determination under Trade Agreements Act of 1979.

**EFFECTIVE DATE:** January 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Jean Heilman Grier, Senior Procurement Negotiator, Office of the United States Trade Representative, (202) 395-9476, or Theodore R. Posner, Assistant General Counsel, Office of the United States Trade Representative, (202) 395-9512.

On June 6, 2003, the United State and Chile entered into the United States-Chile Free Trade Agreement ("the USCFTA"). Chapter 9 of the USCFTA sets forth certain obligations with respect to government procurement of goods and services, as specified in Annex 9.1 of the USCFTA.

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(1).

<sup>8</sup> 17 CFR 200.30-3(a)(75).